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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

Gramercy Distressed Opportunity Fund II, L.P.,)
Gramercy Distressed Opportunity Fund III, L.P.,)
Gramercy Distressed Opportunity Fund III-A,)
L.P., Gramercy Funds Management LLC,)
Gramercy EM Credit Total Return Fund, and) Civil Action No. 21-CV-223-F
Roehampton Partners LLC,)
)
Plaintiffs,)
)
v.)
)
Oleg Bakhmatyuk, Nicholas Piazza, SP Capital)
Management, LLC, Oleksandr Yaremenko, and)
TNA Corporate Solutions, LLC,)
)
Defendants.)

MEMORANDUM IN SUPPORT OF DEFENDANTS' EXPEDITED MOTION TO STAY

BACKGROUND

In this case, the Defendants appealed the Court's orders denying their motions to stay or dismiss the lawsuit and compel arbitration. [ECF Nos. 85, 88]. In response, this Court *sua*

spponte ordered that the case be “stayed pending the conclusion of the interlocutory appeals.” [ECF No. 101] at 1. Several months later, the Tenth Circuit issued an order dismissing the consolidated appeal for lack of appellate jurisdiction. [ECF No. 106] at 8.

The Defendants filed a petition for rehearing en banc, arguing that the Tenth Circuit’s order was inconsistent with Supreme Court precedent, Tenth Circuit precedent, and the authoritative decisions of other courts. **Ex. A** at 1–3 (May 24, 2023 Appellants’ Petition for Rehearing En Banc). The Tenth Circuit ordered the Plaintiffs “to file a response to the petition on or before June 9, 2023.” **Ex B** at 2 (May 26, 2023 Order). The Plaintiffs have not yet filed that response. Notably, because the Defendants’ petition remains pending, the appellate court has not issued a mandate. *See* Fed. R. App. P. 41(b) (circuit court mandate must issue “7 days after entry of an order denying a timely . . . petition for rehearing en banc . . .”).

On June 6, 2023, this Court *sua sponte* entered an order lifting its earlier stay of the case. [ECF No. 107] at 1. In that order, the Court stated, “Now that the appeals are concluded, the reason for the temporary stay no longer exists.” *Id.* It allowed the Plaintiffs to file an amended complaint by June 12, 2023, and ordered the Defendants to file an answer to Plaintiffs’ complaint by June 20, 2023. *Id.*

ARGUMENT

This Court should stay the litigation until the Tenth Circuit issues its mandate in the consolidated appeal.

As this Court recognized in its original order staying the case, when a party files an interlocutory appeal from the denial of a motion to compel arbitration, “the district court is divested of jurisdiction until the appeal is resolved on the merits.” *McCauley v. Halliburton Energy Servs.*, 413 F.3d 1158, 1160 (10th Cir. 2005). Critically for purposes of this motion,

jurisdiction is not returned to the district court until the Tenth Circuit issues a mandate. *In re Sunset Sales, Inc.*, 195 F.3d 568, 571 (10th Cir. 1999) (“Issuance of the mandate formally marks the end of appellate jurisdiction. Jurisdiction returns to the tribunal to which the mandate is directed, for such proceedings as may be appropriate . . .”’) (quoting *Johnson v. Bechtel Assocs. Professional Corp.*, 801 F.2d 412, 415 (D.C. Cir. 1986)); *Burton v. Johnson*, 975 F.2d 690, 693 (10th Cir. 1992) (“Once we affirmed the District Court on appeal and returned the mandate, however, the District Court reacquired jurisdiction over the case”). In this case, the Tenth Circuit has not issued a mandate in the consolidated appeal. *See* Fed. R. App. P. 41 (mandate must issue 7 days “after entry of an order denying a timely . . . petition for rehearing en banc . . .”). As a result, this Court does not yet have jurisdiction and the case may not proceed.

In addition, there is good reason and good cause to issue a stay. Having the parties litigate the same subject matter in the trial court and the appellate court simultaneously not only lacks a jurisdictional basis, but it would also run the risk of wasting resources and subjecting the parties to inconsistent orders. If the Tenth Circuit grants the petition for rehearing en banc, the appellate court’s judgment is vacated and the mandate is stayed. 10th Cir. R. 35.6. It is substantially less burdensome—both for this Court and for the parties—to stay the case until the Tenth Circuit rules on the petition.

CONCLUSION

The Court should stay this litigation until the Tenth Circuit issues a mandate and returns jurisdiction to this Court.

Dated this 9th day of June, 2023.

/s/ Bryson C. Smith

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of June, 2023, I electronically transmitted the foregoing document to the Clerk of Court of the U.S. District Court, District of Wyoming, using the CM/ECF system for filing. Based on the records currently on file the Clerk of Court will transmit a Notice of Electronic Filing to all registered counsel of record.

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